

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WILLIAM JOHNSON,)	
Petitioner)	
)	
v.)	C.A. 11-cv-30174-MAP
)	
GARY RODEN,)	
Respondent)	

MEMORANDUM AND ORDER REGARDING
RESPONDENT'S MOTION TO DISMISS
(Dkt. No. 9)

March 28, 2012

PONSOR, U.S.D.J.

Petitioner, acting pro se, originally filed this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Dkt. No. 1). He also filed a Motion for Leave to Proceed In Forma Pauperis and a Motion to Appoint Counsel. (Dkt. Nos. 6 & 7).

On August 18, 2011, Respondent filed a Motion to Dismiss the Petition, essentially on the ground of failure to exhaust. (Dkt. No. 9). On August 29, 2011, Petitioner filed in pro se opposition to the motion (Dkt. No. 14), and the court on October 25, 2011 referred all the pending motions to Magistrate Judge Kenneth P. Neiman. Subsequently, Judge Neiman appointed Attorney Kevin L. Barron as counsel for Petitioner.

Based on the foregoing, the court hereby DENIES Respondent's Motion to Dismiss (Dkt. No. 9), without

prejudice. The purpose of this ruling is to allow Petitioner, now represented by qualified counsel, to file an amended Petition. This filing may, or may not, sift out claims which Respondent deems to be unexhausted and will, in any event, place the Petition on a firmer legal footing.

Counsel for Petitioner is ordered to file this amended Petition no later than April 16, 2012. Respondent may file a renewed Motion to Dismiss no later than May 14, 2012. Petitioner's opposition to the renewed motion may be filed by June 11, 2012.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge